

Proposed technical amendment:

SECTION ____.

"§ 1-117. Cross-index of lis pendens.

Every notice of pending litigation filed under this Article shall be cross-indexed by the clerk of the superior court in a record, called the "Record of Lis Pendens," to be kept by ~~him pursuant to G.S. 2-42(6); the clerk under G.S. 7A-109.~~

(1903, c. 472; Rev., s. 464; 1919, c. 31; C.S., s. 501; 1959, c. 1163, s. 2.)

Editor's Note. - G.S. 2-42, referred to in this section, was revised and transferred to G.S. 7A-109 by Session Laws 1971, c. 363, s. 6.

Explanation:

Excerpt from Chapter 363 of the 1971 Session Laws:

NORTH CAROLINA GENERAL ASSEMBLY
1971 SESSION

CHAPTER 363
SENATE BILL 94

AN ACT TO REPEAL VARIOUS OBSOLETE SECTIONS OF GENERAL STATUTES CHAPTER 2, (CLERK OF SUPERIOR COURT), AND TO REVISE THE REMAINING SECTIONS AND TRANSFER THEM TO CHAPTER 7A(THE JUDICIAL DEPARTMENT).

The General Assembly of North Carolina do enact:

Section 1. G.S. 2-2, 2-5, 2-6, 2-24, and 2-25 are revised, combined, and transferred to G.S. Chapter 7A, Article 12, to read as follows:

"§ 7A-100. Election; term of office; oath; vacancy; office and office hours. — (a) A clerk of the superior court for each county shall be elected by the qualified voters thereof, to hold office for a term of four years, in the manner prescribed by Chapter 163 of the General Statutes. The clerk, before entering on the duties of his office, shall take the oath of office prescribed by law. If the office of clerk of superior court becomes vacant otherwise than by the expiration of the term, or if the people fail to elect a clerk, the senior regular resident superior court judge for the county shall fill the vacancy by appointment until an election can be regularly held.

(b) The county commissioners shall provide an office for the clerk in the courthouse or other suitable place in the county seat. The clerk shall observe such office hours and holidays as may be directed by the Administrative Officer of the Courts."

Sec. 2. G.S. 2-10, 2-12, 2-13, and 2-15 are revised, combined, and transferred to Chapter 7A and there combined with G.S. 7A-102, which is also revised, to read as follows:

"§ 7A-102 Assistant and deputy clerks; appointment; number; salaries; duties. —

(a) The numbers and salaries of assistant clerks, deputy clerks, and other employees in the office of each clerk of superior court shall be determined by the Administrative Officer of the Courts after consultation with the clerk concerned. All personnel in the clerk's office are employees of the State. The clerk appoints the assistants, deputies, and other employees in his office to serve at his pleasure. Assistant and deputy clerks shall take the oath of office prescribed for clerks of superior court, conformed to the office of assistant or deputy clerk, as the case may be.

(b) An assistant clerk is authorized to perform all the duties and functions of the office of clerk of superior court, and any act of an assistant clerk is entitled to the same faith and credit as that of the clerk. A deputy clerk is authorized to certify the existence and correctness of any record in the clerk's office and to perform any other ministerial act which the clerk may be authorized and empowered to do, in his own name and without reciting the name of his principal. The clerk is responsible for the acts of his assistants and deputies."

....

Sec. 6. G.S. 2-42 is hereby revised, renumbered, and transferred to Chapter 7A to read as follows:

"§ 7A-109. Record-keeping procedures. — (a) Each clerk shall maintain such records, files, dockets, and indexes as are prescribed by rule of the Director of the Administrative Office of the Courts. Except as prohibited by law, these records shall be open to the inspection of the public during regular office hours, and shall include civil actions, special proceedings, estates, criminal actions, juvenile actions, minutes of the court, judgments, liens, lis pendens, and all other records required by law to be maintained. The rules prescribed by the Director shall be designed to accomplish the following purposes:

- (1) to provide an accurate record of every determinative legal action, proceeding, or event which may affect the person or property of any individual, firm, corporation, or association;
- (2) to provide a record during the pendency of a case that allows for the efficient handling of the matter by the court from its initiation to conclusion and also affords information as to the progress of the case;
- (3) to provide security against the loss or destruction of original documents during their useful life and a permanent record for historical uses;
- (4) to provide a system of indexing that will afford adequate access to all records maintained by the clerk;
- (5) to provide, to the extent possible, for the maintenance of records affecting the same action or proceeding in one rather than several units; and
- (6) to provide a reservoir of information useful to those interested in measuring the effectiveness of the laws and the efficiency of the courts in administering them.

(b) The rules shall provide for indexing according to the minimum criteria set out below:

- (1) Civil actions - the names of all parties;
- (2) Special proceedings - the names of all parties;

- (3) Administration of estates - the name of the estate and in the case of testacy the name of each devisee;
- (4) Criminal actions - the names of all defendants;
- (5) Juvenile actions - the names of all juveniles;
- (6) Judgments, Liens, Lis Pendens, etc. - the names of all parties against whom a lien has been created by the docketing of a judgment, notice of lien, transcript, certificate, or similar document and the names of all parties in those cases in which a notice of lis pendens has been filed with the clerk and abstracted on the judgment docket.

(c) The rules shall require that all documents received for docketing shall be immediately indexed either on a permanent or temporary index. The rules may prescribe any technological process deemed appropriate for the economical and efficient indexing, storage and retrieval of information."

....

Sec. 11. G.S. Chapter 2 is repealed except insofar as its provisions have been revised and transferred to Chapter 7A by the preceding sections of this act. Repeal of any curative of validating laws by this section shall not be construed to invalidate any acts validated by the curative or validating laws.

Sec. 11.1. G.S. 7A-105 is amended in line one by deleting "may" and inserting in lieu thereof "shall".

Sec. 12. The former G.S. 7A-106, having served its purpose as a transitional section, is repealed.

Sec. 13. This act is effective October 1, 1971.

In the General Assembly read three times and ratified, this the 11th day of May, 1971.

G.S. 7A-109 from the 2015 database:

§ 7A-109. Record-keeping procedures.

(a) Each clerk shall maintain such records, files, dockets and indexes as are prescribed by rules of the Director of the Administrative Office of the Courts. Except as prohibited by law, these records shall be open to the inspection of the public during regular office hours, and shall include civil actions, special proceedings, estates, criminal actions, juvenile actions, minutes of the court, judgments, liens, lis pendens, and all other records required by law to be maintained. The rules prescribed by the Director shall be designed to accomplish the following purposes:

- (1) To provide an accurate record of every determinative legal action, proceeding, or event which may affect the person or property of any individual, firm, corporation, or association;
- (2) To provide a record during the pendency of a case that allows for the efficient handling of the matter by the court from its initiation to conclusion and also affords information as to the progress of the case;
- (3) To provide security against the loss or destruction of original documents during their useful life and a permanent record for historical uses;
- (4) To provide a system of indexing that will afford adequate access to all records maintained by the clerk;

- (5) To provide, to the extent possible, for the maintenance of records affecting the same action or proceeding in one rather than several units; and
 - (6) To provide a reservoir of information useful to those interested in measuring the effectiveness of the laws and the efficiency of the courts in administering them.
- (a1) The minutes maintained by the clerk pursuant to this subsection shall record the date and time of each convening of district and superior court, as well as the date and time of each recess or adjournment of district and superior court with no further business before the court.
- (b) The rules shall provide for indexing according to the minimum criteria set out below:
- (1) Civil actions. - the names of all parties;
 - (2) Special proceedings. - the names of all parties;
 - (3) Administration of estates. - the name of the estate and in the case of testacy the name of each devisee;
 - (4) Criminal actions. - the names of all defendants;
 - (5) Juvenile actions. - the names of all juveniles;
 - (6) Judgments, liens, lis pendens, etc. - the names of all parties against whom a lien has been created by the docketing of a judgment, notice of lien, transcript, certificate, or similar document and the names of all parties in those cases in which a notice of lis pendens has been filed with the clerk and abstracted on the judgment docket.
- (c) The rules shall require that all documents received for docketing shall be immediately indexed either on a permanent or temporary index. The rules may prescribe any technological process deemed appropriate for the economical and efficient indexing, storage and retrieval of information.
- (d) In order to facilitate public access to court records, except where public access is prohibited by law, the Director may enter into one or more nonexclusive contracts under reasonable cost recovery terms with third parties to provide remote electronic access to the records by the public. Costs recovered pursuant to this subsection shall be remitted to the State Treasurer to be held in the Court Information Technology Fund established in G.S. 7A-343.2.
- (e) If any contracts entered into under G.S. 7A-109(d) [subsection (d) of this section] are in effect during any calendar year, the Director of the Administrative Office of the Courts shall submit to the Joint Legislative Commission on Governmental Operations not later than February 1 of the following year a report on all those contracts. (Code, ss. 83, 95, 96, 97, 112, 1789; 1887, c. 178, s. 2; 1889, c. 181, s. 4; 1893, c. 52; 1899, c. 1, s. 17; cc. 82, 110; 1901, c. 2, s. 9; c. 89, s. 13; c. 550, s. 3; 1903, c. 51; c. 359, s. 6; 1905, c. 360, s. 2; Rev., s. 915; 1919, c. 78, s. 7; c. 152; c. 197, s. 4; c. 314; C.S., s. 952; 1937, c. 93; 1953, c. 259; c. 973, s. 3; 1959, c. 1073, s. 3; c. 1163, s. 3; 1961, c. 341, ss. 3, 4; c. 960; 1965, c. 489; 1967, c. 691, s. 39; c. 823, s. 2; 1971, c. 192; c. 363, s. 6; 1997-199, ss. 1, 2; 1999-237, s. 17.15(c); 2011-145, s. 15.6(b); 2012-142, s. 16.5(g); 2013-360, s. 18B.8(a).)

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Subject: GSC tech correction - G.S. 1-117 ref to G.S. 2-42

Bly -

A quick note for the your or the GSC's consideration as a technical correction in some future TC bill: there's a reference to a long-repealed and recodified provision from former Chapter 2 still lingering in G.S. 1-117 (cross-indexing of lis pendens by the clerk of superior court). We ran across it while working on this session's HB 397 with the Conference of District Attorneys.

The reference is to "G.S. 2-42(6)." That statute was "revised, renumbered, and transferred" to G.S. 7A-109 by S.L. 1971-363, sec. 6, effective Oct. 1, 1971.

Thanks.

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